

FEDERAL ELECTION COMMISSION
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FIRST GENERAL COUNSEL'S REPORT

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DATE COMPLAINT FILED: October 11, 2002

DATE OF NOTIFICATION: October 21, 2002

DATE ACTIVATED: March 6, 2003

EXPIRATION OF SOL: August 29, 2007

COMPLAINANT:

Donald F. McGahn II, General Counsel,
National Republican Congressional Committee

RESPONDENTS:

Mary Robert
Janet Robert
Janet Robert for Congress and Teresa Silha,
as treasurer

RELEVANT STATUTES:

2 U.S.C. § 434(b)
2 U.S.C. § 441a
11 C.F.R. § 110.10

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The complaint in this matter alleges that Janet Robert ("the Candidate"), a candidate for Minnesota's Sixth Congressional District in 2002, knowingly and willfully accepted contributions from her mother, Mary Robert ("the Candidate's mother"), in excess of the contribution limits permitted by the Federal Election Campaign Act of 1971, as amended

1 (“the Act”), and that Janet Robert for Congress and Teresa Silha, as treasurer, (“Robert
2 Committee”) failed to report these contributions.¹ *See* Complaint. Specifically, the complaint
3 alleges that the Candidate used money given to her by her mother to make loans totaling
4 \$811,219 to the Robert Committee. *Id.* The complaint notes that in newspaper articles the
5 Candidate has acknowledged receiving cash from her mother, but has refused to disclose the
6 amount of the gift, claiming that the information is “personal.” *Id.* While the complaint notes
7 that the Candidate “is technically a millionaire,” it argues that because the bulk of her wealth is
8 in bonds and stocks with limited marketability, absent her mother's gift she would not have had
9 the funds to finance her \$1.5 million ad campaign.² *Id.* Respondents acknowledge that the
10 Candidate's mother gave the Candidate a \$800,000 gift but contend that it constituted the
11 Candidate's "personal funds" because it was one of ten gifts of the same amount the Candidate's
12 mother gave to each of her ten children, and that such gifts were customarily given in years prior
13 to Janet Robert's candidacy. *See* Mary Robert Response; Response of Janet Robert and Janet
14 Robert for Congress and Teresa Silha, as treasurer.

15 As further discussed below, reason to believe findings would permit an investigation to
16 determine whether the \$800,000 gift became the Candidate's “personal funds.” While we would
17 invite respondents, on an informal basis, to provide additional information concerning the gifts at
18 issue in order to substantiate the claims they make in their response, we also recommend the

¹ The Federal Election Campaign Act of 1971, as amended (“the Act”) governs the activity in this matter and the regulations in effect during the pertinent time period, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 (“BCRA”). All references to the Act and regulations in this Report exclude the changes made by BCRA.

² The amount for the Robert campaign media expenditures comes from the news reports submitted with the complaint, citing the source as the Federal Communications Commission, showing that the Robert campaign spent more than \$1,500,000 in advertising expenses consisting of a total of \$1,340,000 in television ads, plus 12 to 18% usually paid as commission to a media buyer.

Commission authorize the use of compulsory process if informal discovery proves inadequate or if a respondent or witness refuses to cooperate without a subpoena.

II. FACTUAL AND LEGAL ANALYSIS

No person may make contributions to any candidate and his or her authorized political committee with respect to any election for federal office that exceeds \$1,000, and no individual may make aggregate contributions to political candidates and committees in excess of \$25,000 in any calendar year.³ 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(3). These contribution limits also apply to a candidate's family members.⁴ The Act prohibits any candidate or political committee from knowingly accepting any excessive contribution. 2 U.S.C. § 441a(f).

The circumstances surrounding the \$800,000 gift, including the timing, amount, and form of the gift strongly suggest the Candidate's mother made the gift to influence the Candidate's election. First, the Candidate's mother gave the candidate the \$800,000 gift on August 29, 2002, during the critical period leading up to the general election, and less than three weeks after she had reached her direct contribution limits to the candidate.⁵ The Candidate's mother does not

³ A contribution is any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(A)(i).

⁴ In *Buckley v. Valeo*, 424 U.S. 1, 51 n.52 (1976) ("*Buckley*"), the Supreme Court stated that the legislative history of the Act provided, "It is the intent of the conferees that members of the immediate family of any candidate shall be subject to the contribution limitations established by this legislation The immediate family member would be permitted merely to make contributions to the candidate in amounts not greater than \$1,000 for each election involved. S. Rep. No. 93-1237, p. 58 (1974), U.S. Code Cong. & Admin. News 1974, p. 5627." The Court further stated, "Although the risk of improper influence is somewhat diminished in the case of large contributions from immediate family members, we cannot say that the danger is sufficiently reduced to bar Congress from subjecting family members to the same limitations as non-family contributors." *Id.* at 53 n.59. The contribution limitations referenced in *Buckley* are at the same levels as those in the Act at 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3).

⁵ On August 10, 2002, the Candidate's mother had contributed \$2,000 to the Candidate – \$1,000 each for the primary and general elections.

1 disclose when she notified her children of the gift or on what date she intended to make the gifts,
2 suggesting that the upcoming election may have been a factor in the timing of the gifts.⁶

3 The gift also coincided with the period when the Robert Committee had roughly
4 \$180,000 in its coffers, but within three months had made substantial disbursements for media.⁷
5 Specifically, the Robert Committee made three media disbursements totaling \$1,566,000:
6 \$900,000 on August 21, 2002; \$306,000 on September 18, 2002; and \$360,000 on September 24,
7 2002. To provide sufficient funds to cover these expenditures, the Candidate made four major
8 loans totaling \$1,606,600 to her campaign. Specifically, on August 21, 2002, eight days before
9 she received her mother's \$800,000 check, the Candidate made two loans totaling \$800,000 to
10 her campaign: a \$750,000 bank loan secured with the Candidate's shares of stocks valued at
11 \$1,142,457; and a \$50,000 loan from the Candidate's "personal funds." On August 24, 2002, the
12 Candidate made a \$500,000 loan to her campaign also from "personal funds." Finally on
13 September 18, 2002, the Candidate made a \$306,600 loan to her campaign again from "personal
14 funds." Although the dates of two of the "personal loans" preceded the date of the \$800,000 gift,
15 these loans could very well have been made as an advance, in anticipation of the \$800,000 gift.
16 In addition to the loans, the Candidate made contributions totaling \$115,498 to her committee,
17 for a combined total of \$1,722,098 in contributions/loans. If the \$800,000 gift from the
18 Candidate's mother constitutes a contribution, it would represent 36% of the Robert Committee's

⁶ In her response, the Candidate's mother states that after she had informed several of her children that she was going to make the gifts, the Candidate called her mother's bookkeeper to request the check. *See* Mary Robert Response. The Candidate's mother submitted copies of the checks with her response. *Id.* at Exhibit A. The Candidate's check shows a date of August 29, 2002, and the other checks show a date of September 3, 2002.

⁷ The Robert Committee's 2002 Pre-Primary report indicates that as of July 1, 2002, the Robert Committee had \$179,517.07 in cash-on-hand.

1 total receipts. In short, it appears that the \$800,000 gift enabled the Candidate to infuse her
2 committee with sufficient funds to cover campaign expenses.

3 Though the Candidate's net worth would seem sufficient to cover such costs, news
4 reports of the Candidate's financial disclosure statement suggest that most of the candidate's
5 assets were not liquid.⁸ Moreover, because the EIGA statement shows assets in a broad range
6 rather than in specific amounts, it is not clear whether the Candidate would have had sufficient
7 liquid assets to make the loans. News reports also state that the Candidate with her family own
8 the Siegel-Robert Company, that the Company's stock has limited marketability because it is not
9 publicly traded, and that the Candidate has stated that her main assets are her 361,000 shares in
10 Siegel-Robert now worth about \$6,500,000. *See* Greg Gordon, *Boardroom action dogs*
11 *candidate; Robert calls incident honest dispute*, Star Tribune (Minneapolis, MN), Aug. 1, 2002,
12 at 1B. The reports further note that most of the Candidate's income has been derived from
13 Siegel-Robert stock dividends, and that the Candidate earned a net income of nearly \$700,000 in
14 1999. *See* Greg Gordon, *Robert is flooding House race with money; Most of it is from her own*
15

⁸ The complaint references and attaches news reports that provide information on the Candidate's financial activities as to family-owned Siegel-Robert, Inc., and the Candidate's financial disclosure statement that she filed as required for House candidates under the Ethics in Government Act ("EIGA"), 2 U.S.C. § 101 *et seq.* *See* Complaint, Greg Gordon, *Robert is flooding House race with money; Most of it is from her own pocket*, Star Tribune (Minneapolis, MN), Oct. 5, 2002, at A1; Greg Gordon, *Boardroom action dogs candidate; Robert calls incident honest dispute*, Star Tribune (Minneapolis, MN), Aug. 1, 2002, at 1B (attached to complaint). The complaint did not provide a separate copy of the EIGA statement. The news reports reflect that, as of August 7, 2002, the Candidate reported the following assets on her financial disclosure statement:

Stock in family-owned Siegel-Robert, Inc. --\$5,000,000-\$25,000,000
Common stocks--\$11,000-\$165,000
Bank accounts--\$300,000-\$600,000
First American Prime Oblig Ed A--\$50,000-\$100,000
Mortgage (owed to Robert)--\$50,001-\$100,000
Bonds--\$30,000-\$100,000
Brokerage account--\$50,000-\$100,000
Total assets--\$5,491,000-\$26,165,000
Liquid Assets--\$391,000-\$1,150,000

1 *pocket*, Star Tribune (Minneapolis, MN), Oct. 5, 2002, at A1. Based on the amount of liquid
2 assets available to the Candidate, reportedly in the \$391,000 to \$1,150,000 range (*see* footnote 8,
3 *infra*), after she had already encumbered her stock (and the bulk of the stock had limited
4 marketability), it appears that without the \$800,000 monetary gift, she may not have had enough
5 assets to cover campaign costs. Moreover, the form of the gift, a monetary transfer, would have
6 provided the candidate with the liquidity to make the \$1,722,098 in personal loans and
7 contributions to her campaign.

8 A candidate for federal office may make unlimited expenditures and loans from personal
9 funds. 11 C.F.R. § 110.10. The Commission's regulations define "personal funds" as, *inter alia*,
10 gifts of a personal nature which had been customarily received prior to candidacy, and proceeds
11 from lotteries and similar legal games of chance. 11 C.F.R. § 110.10(b)(2). While respondents
12 argue that the \$800,000 monetary gift fits the category of "gifts of a personal nature customarily
13 received prior to candidacy," they have not submitted sufficient information to support their
14 contention.

15 The Candidate argues that the gift constitutes "personal funds" because her mother made
16 similar gifts annually to each of her children. She further argues that her financial disclosure
17 statement, showing liquid assets of up to \$1,150,000 and total assets exceeding \$26,000,000,
18 demonstrates that she had more than sufficient assets to fund the loans to her campaign. *See*
19 Response of Janet Robert and Robert Committee. The Candidate, however, has not provided
20 specific information on her mother's annual gifts. In addition, information from the Candidate's
21 financial disclosure statement raises questions about the Candidate's contention that she had
22 sufficient assets to make the loans. As stated earlier, it appears that the bulk of the Candidate's
23 assets are in shares of limited marketability Siegel-Robert stocks. Moreover, the \$750,000 bank

1 loan to the campaign had encumbered the Candidate's shares of stocks, further limiting the
2 Candidate's options. Thus, additional information regarding the Candidate's liquidity could also
3 substantiate the Candidate's claims regarding her ability to make the loans in question.

4 The Candidate's mother argues that she made equal, unconditional \$800,000 gifts to each
5 of her ten children, that the gifts are consistent with her pattern of giving in previous years, and
6 that she made the gifts for personal and estate planning reasons. *See* Mary Robert Response at 1.
7 She also argues that it would have made no sense for her to spend all this money just so she
8 could make an \$800,000 contribution to the Candidate's campaign and that the amount she spent
9 on the gifts is much larger than any potential FEC civil penalty.⁹ *See* Mary Robert Response at 5.

10 In support of her contention that the \$800,000 monetary gifts fit the pattern of giving in
11 previous years, the Candidate's mother asserts that, beginning in the 1960s, she and her late
12 husband, Bruce Robert, made numerous gifts of Siegel-Robert, Inc. stock and/or money to their
13 children.¹⁰ *See* Mary Robert Response at 2. She further asserts that over the years, she has
14 continued to make gifts to her children and that "the value of these gifts has ranged from
15 approximately \$3,000 per year to hundreds of thousands of dollars per year for each child." *Id.*
16 She explains that the children generally received equal amounts, but that in some years the
17 children received different amounts in an attempt "to equalize" the number of gifts and shares of
18 stock received by the younger and older children. *Id.* at 2-3. As with the Candidate, however,
19 the Candidate's mother has not provided specific information about her past gifts to her children.

⁹ The Candidate's mother explains that the \$800,000 equal gifts to the Candidate's nine siblings cost her an extra \$7,200,000 and that adding the \$4,000,000 in gift tax resulted in a total cost for the gifts of approximately \$12,000,000. *See* Mary Robert Response at 5.

¹⁰ Mary Robert, the Candidate's mother, is the 83-year-old widow of Bruce Robert, who died in 1996. Bruce Robert was the founder of Siegel-Robert, Inc., a privately held corporation.

1 In support of her contention that she made the \$800,000 gifts for personal and estate
2 planning reasons, the Candidate's mother asserts that by June 30, 2002, she had given or sold
3 most of Siegel-Robert, Inc. stock to her children, held "liquid assets valued in excess of
4 \$40,000,000," and received an annual income from her assets and marital trusts that exceeded

5 *Id.* at 3. She asserts that she decided to give each of her ten children \$800,000 after
6 considering her "age, nature and amount of assets, the applicable gift and estate tax rules, and her
7 personal desire that her children receive substantial portions of her estate while she was still
8 alive."¹¹ *Id.*

9 The Commission has focused on objective factors in determining whether a gift fits into
10 the category of "gifts of a personal nature customarily received prior to candidacy." For
11 example, in Advisory Opinion 1988-7, the Commission responded to an inquiry from an
12 "undeclared candidate" for a House seat in 1988 regarding his contribution of monetary gifts
13 from his parents as personal funds to his campaign. The requester had received a gift of \$20,000
14 in each of the three years prior to his candidacy and believed his parents would give him another
15 gift of \$20,000 during 1988. The requester asked whether he could contribute the expected
16 \$20,000 as "personal funds" even though he had not received the gift prior to filing a Statement
17 of Candidacy with the FEC. The Commission looked at the date the gifts began, the consistency
18 in the amount, and the form of the gifts over a number of years in making its interpretation. The
19 Commission found that the \$20,000 cash gifts he received in the three years prior to his
20 candidacy indicated a "repetitious custom of monetary gifts" of a personal nature, rather than

¹¹ The Candidate's mother notes that there will be an estate tax benefit on the money she gifted her children if she lives for another three years. See 26 U.S.C. § 2035(b) (donor's gross estate need not include the amount of any gift tax paid by donees of any net gift made more than three years before donor's death); See Mary Robert Response at 3 n.2.

1 gifts made in anticipation of or related to any campaign for federal office. The Commission thus
2 concluded that another \$20,000 cash gift under similar circumstances during 1988 would
3 similarly be considered personal funds.

4 Unlike the requester in AO 1988-7, the respondents have not provided information
5 showing that the Candidate's mother customarily made gifts similar to the \$800,000 monetary
6 gift prior to her daughter's candidacy. Instead, they have provided only general representations
7 regarding previous gifts and have not yet provided specific information about the amount, form,
8 timing, or recipients of previous gifts the Candidate's mother made to the Candidate and her
9 siblings. The specific amount of previous gifts may be relevant if in preceding years the children
10 received gifts of considerably less value than the \$800,000 gift or if the children received gifts of
11 different value. The form of previous gifts may be relevant if it shows that preceding gifts were
12 mostly shares of stocks rather than monetary gifts. The timing of the gifts may be relevant if in
13 all preceding years, the Candidate's mother distributed gifts at a specific time, e.g., Christmas or
14 New Year's, or each child received his or her annual gifts at different times of the year, rather
15 than each receiving the gift in August or September as in 2002.

16 The personal and estate planning reasons and the ten equal \$800,000 monetary gifts may
17 be relevant, but do not by themselves qualify her gift to the candidate as "personal funds" under
18 the regulations. Commission regulations define specific transfers to candidates as "personal
19 funds," including four related to estate planning: bequests to the candidate, income from trusts
20 established prior to candidacy, income from trusts established by bequest after candidacy of
21 which the candidate is the beneficiary, and gifts of a personal nature customarily received prior to
22 candidacy. 11 C.F.R. § 110.10(b)(2). Each of these circumstances eliminates any link between
23 the transfers and the candidacy. The Commission's regulations thereby strike a balance between

1 barring any transfers of funds from family members exceeding the contribution limits and
2 permitting a narrowly defined group of circumstances which, by objective means, demonstrates
3 that the transfers were unconnected to the candidacy. The regulation thus eliminates the
4 relevance of subjective intent in favor of objective factors, such as timing and form. If family
5 members could justify gifts made after candidacy solely on the basis of personal or estate
6 planning considerations, they could effectively circumvent the statute and the regulation.
7 Likewise, if making equal gifts to each child was sufficient to establish a gift as "personal funds,"
8 parents with sufficient means could provide their children with substantial gifts under the guise
9 of estate planning, even if the purpose of the gift to the candidate child was to influence a federal
10 election. Nevertheless, the personal and estate planning reasons and the equal gifts would bolster
11 the conclusion that the \$800,000 gift became the candidate's personal funds if the evidence also
12 shows that the gift was consistent with a pattern of giving over previous years.

13 While respondents may well produce evidence that the \$800,000 monetary gift was "of a
14 personal nature customarily received prior to candidacy," based on the available information,
15 there is reason to believe that the Candidate's mother's \$800,000 monetary gift was a contribution
16 in excess of the Act's limits rather than the Candidate's "personal funds."¹² Thus, in order to
17 explore further the activity at issue, this Office recommends the Commission find reason to
18 believe Mary Robert violated 2 U.S.C. § 441a(a)(1)(A) by making \$800,000 in excessive

¹² Though Complainant argues respondents knowingly and willfully violated the Act, we are withholding any knowing and willful recommendation until after the investigation. The Act explicitly provides that the Commission may find that violations are knowing and willful. 2 U.S.C. § 437g. The knowing and willful standard requires knowledge that one is violating the law. *FEC v. John A. Dramei for Congress Comm.*, 640 F. Supp. 985 (D.N.J. 1986). Complainant asserts that the Candidate's statement "it would be illegal for me to take a gift from my mother, if she gave a gift to me alone," as reported in the newspaper article submitted with the complaint, shows that she was aware of the Act's prohibitions regarding excessive contributions and could suggest that the gifts to the children were deliberately structured to make it appear as if the gift was unconnected to candidacy. However, as we noted above, an investigation is needed to determine whether the gift was a contribution.

IV. **RECOMMENDATIONS**

1. Find reason to believe that Mary Robert violated 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3).
2. Find reason to believe that Janet Robert violated 2 U.S.C. § 441a(f).
3. Find reason to believe that Janet Robert for Congress and Teresa Silha, as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b).
4. Approve the appropriate factual and legal analyses.
5. Authorize the use of compulsory process in this matter, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas to Mary Robert, Janet Robert, and Janet Robert for Congress and Teresa Silha, as treasurer, and the issuance of additional interrogatories, document subpoenas, and deposition subpoenas, as necessary.

1 contributions to Janet Robert for Congress and 2 U.S.C. § 441a(a)(3) by making \$777,000 in
2 excess of the \$25,000 aggregate contribution limit for 2002. This Office also recommends the
3 Commission find reason to believe that Janet Robert, Janet Robert for Congress and Teresa
4 Silha, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting such contributions. In
5 addition, this Office also recommends that the Commission find reason to believe that Janet
6 Robert for Congress and Teresa Silha, as treasurer, violated 2 U.S.C. § 434(b) by incorrectly
7 reporting the excessive contribution from Mary Robert as personal loans from Janet Robert.¹³

8 This Office also recommends that the Commission approve the appropriate factual and
9 legal analyses. This Office recommends a joint factual and legal analysis for Janet Robert and
10 the Robert Committee because they submitted a joint response, have the same counsel, and their
11 violations arose out of the same activity.

12 **III. INVESTIGATION**

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¹³ Political committees must report the identification of each person who makes a contribution or contributions with an aggregate value in excess of \$200 during the reporting period, together with the date and amount. 2 U.S.C. § 434(b)(3).

6. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Date:

2/27/07

BY:

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